

Women, men and the value of their work

Pay discrimination against women is still a reality and a fact hard to believe at the dawn of a new decade in the 21st century. NCPE is aware from its experience when visiting different workplaces that employees are generally keen to discuss the concept of pay discrimination and related issues, even if not everyone understands the full significance of the equal pay principle. This principle is an important part of the employment legal framework in Malta. Maltese law essentially states that all forms of unjustified pay discrimination is illegal. The applicability of this provision is not limited to discrimination on the basis of gender. However, historically, the issue of pay discrimination came to the fore in relation to discrimination in pay based on sex. In fact, the Constitution of Malta specifically mentions the principle of “equal wages” in Article 14 on “Equal Rights for Women and Men.”

Until the 1960s paying women and men different wages based on their sex although performing the same tasks, or tasks of equal value was still legally accepted in many countries around the world. Already in the late 19th century women were striking and struggling to end pay discrimination and demand a right to equal pay. The latter was largely achieved during the second half of the 20th century when countries started introducing legal measures that prohibit sex discrimination in pay. In Malta, this became enshrined in the 1964 Constitution as well as included in both employment and equality legislation. The prohibition of pay discrimination is also part of the founding treaty of the European Union (EU) and of successive Directives of the EU.

However, enshrining the legal right to equal pay did not spell the end of pay discrimination. In fact, in Malta, equal pay for women and men started to be gradually implemented first in the public sector followed by the private sector in the late sixties. Unequal pay, as something that has deep historical and social roots, is still prevalent and may take several forms. In order to identify discrimination in pay and assess the extent of the problem we first have to understand the full implications of the legal provision giving employees the right to the “...*same rate of remuneration for work of equal value*”. This wording, extracted from Maltese employment law (EIRA, Article 27), is based on internationally-accepted standards and definitions. According to the International Labour Organisation (ILO), pay, or remuneration, refers to the full range of payments and benefits, including basic pay, non-salary payments, bonuses and allowances.

The most easily identifiable form of unequal pay is that of direct pay discrimination, that is, when women and men are paid differently for doing the same work. This occurs in those cases where two or more persons performing the same tasks within the same company, even if with distinct job titles, are paid differently because of their sex. In such cases, the only pay differences allowed by law are those based on “...*different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such salary scales have a maximum that is achieved within a specified period of time.*” (EIRA, Article 27)

It is to be underlined that the absence of direct discrimination alone is not enough to ensure equal pay. Understanding the words “*work of equal value*” is key to grasping the full significance of the equal pay principle as one applying also to people who perform different, even unrelated, tasks that are, however, of equal value. This is one of the main reasons why unequal pay persists and is an insidious problem to address. Work traditionally associated with the female sphere is often given less status, less importance and less pay when compared to work of equal value traditionally associated with males. The persistence of unequal pay is thus directly connected to gender roles and stereotypes, and the devaluation of work that has been predominantly performed by women. A clear example of this can be found in work involving care-related tasks which, although often involving a high degree of both skill and responsibility, is generally placed at the lower-rungs in the hierarchy of work-value.

Thus, to avoid pay discrimination employers must be aware of potential gender bias when evaluating the pay structure at their workplace. Organisations like the ILO provide tools to assist in the evaluation of jobs by providing objective criteria for their assessment that take into consideration qualifications, effort, responsibility and working conditions. Employers should be also aware that mechanisms related to overall pay increases that give undue weight to overtime and seniority might lead to indirect discrimination in pay, since women tend to do less overtime and have more career interruptions due to family responsibilities.

In addition to the reasons underpinning pay discrimination based on sex, there are also a number of factors that enable its perpetuation. Lack of transparency in pay is one of the main enablers since opaque and secretive pay structures, such as employment contracts with provisions that impose confidentiality with regards to pay, make it almost impossible for employees to identify and act against pay discrimination. The fight against unequal pay is also hindered by limited public awareness about the different forms of pay discrimination and about possibilities for seeking redress.

Maltese and EU laws make it very clear that women and men are to be paid equally for work of equal value. The NCPE is currently developing an equal pay tool that will allow employers to audit their remuneration systems and identify unjustified wage discrepancies between women and men. Government has also committed itself to establishing a mechanism within the Department for Industrial and Employment Relations (DIER) that gathers information on equal pay and investigates cases of pay discrimination.

Unequal pay damages women, their economic independence and career advancement. It also contributes to the widening gender pay gap and hampers economic growth by discouraging women from participating in the labour market. Employers, unions and public authorities have a legal and social obligation to ensure that the legal principle of equal pay for equal value is always adhered to in practice.